1147

No. 3109

United States Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Plaintiff in Error,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

No. 3109

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Plaintiff in Error,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index. Page

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 16,021.

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,

Plaintiff,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Defendant.

Complaint.

Plaintiff complains of defendant and alleges:

I.

That the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of California and having its office and principal place of business in the city and county of San Francisco, State of California.

II.

That the defendant is now, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of New York and having an office and place of business in the city and county of San Francisco, State of California. That said defendant is a citizen of the State of New York.

III.

That on the 3d day of March, 1915, in a certain action then pending in the District Court of the

United States in and for the Northern District of California, Second Division, entitled The Equitable Trust Company of New York, as Trustee, Complainant, vs. Western Pacific Railway Company et al., Defendants, in Equity, No. 169, said court duly made and entered its order wherein and whereby Frank G. Drum and Warren Olney, Jr., were appointed the Receivers of the property of the said Western Pacific Railway [1*] Company; that thereafter and upon the 4th day of March, 1915, and in accordance with said order, the said Frank G. Drum and Warren Olney, Jr., duly and regularly qualified as such Receivers and thereupon the said Frank G. Drum and Warren Olney, Jr., became, and from the said 4th day of March, 1915, until the 14th day of July, 1916, continuously were, the duly appointed, qualified and acting Receivers of the property of the said Western Pacific Railway Company.

IV.

That, pursuant to a decree of foreclosure and sale made by said court in said cause upon the 27th day of May, 1916, and pursuant to a decree of confirmation of sale made and entered by said court on the 1st day of July, 1916, by deed of Francis Krull, Special Master, and of Frank G. Drum and Warren Olney, Jr., as Receivers, and others, dated the 1st day of July, 1916, all of the railways, franchises, rights and other property of the Western Pacific Railway Company, together with and including all accounts of every kind due to the Receivers of the said prop-

*Page-number appearing at foot of page of original certified Transcript of Record.

erty of the said Western Pacific Railway Company, were granted, bargained, sold, assigned, transferred and conveyed to the plaintiff herein; that upon the 14th day of July, 1916, the plaintiff went into possession of all the said railways, franchises, rights and other property of the said Western Pacific Railway Company, including all accounts of every kind due to the said Receivers of the said property of the said Western Pacific Railway Company, and that the plaintiff is now the owner and in possession of all thereof.

V.

That during the month of November, 1915, there became due from the defendant to the said Frank G. Drum and Warren Olney, Jr., as Receivers of the property of the said Western Pacific Railway Company aforesaid, the sum of $7,341.46, money had and [2] received by the said defendant for the use and benefit of the said Frank G. Drum and Warren Olney, Jr., as such Receivers.

VI.

That the said defendant failed and refused, and ever since has failed and refused, to pay the said sum, or any part thereof, and that the same is now due, owing and unpaid from the said defendant to the said plaintiff herein.

WHEREFORE, plaintiff prays for judgment against the defendant for the sum of $7,341.46, with interest and costs of suit.

A. R. BALDWIN,
ALLAN P. MATTHEW,
Attorneys for plaintiff.

State of California,
City and County of San Francisco,—ss.

C. F. Craig, being first duly sworn, deposes and says: That he is the secretary of The Western Pacific Railroad Company, plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

C. F. CRAIG.

Subscribed and sworn to before me this 10th day of November, 1916.

[Seal] FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 10, 1916. Walter B. Maling, Clerk. [3]

(Title of Court and Cause.)

Judgment.

This cause coming on regularly to be heard on this 27th day of August, 1917, on plaintiff's demurrer to the second amended answer and plaintiff's motion for judgment on the pleadings, and A. P. Matthew and A. R. Baldwin appearing as attorneys for plaintiff, and Knight and Heggerty and C. W. Durbrow appearing as attorneys for defendant, and

IT APPEARING to the satisfaction of the above-

entitled Court that the defendant in the above-entitled action, Pacific Mail Steamship Company, a corporation, heretofore duly made and gave its appearance in said action by serving and filing, on the 12th day of December, 1916, its answer to the verified complaint of plaintiff on file herein; that thereafter, on the 22d day of December, 1916, the plaintiff filed its demurrer to said answer on the ground that said answer did not state facts sufficient to constitute a defense or counterclaim and that on the 23d day of April, 1917, said demurrer duly and regularly came on to be heard and the same was argued by respective counsel for both parties before said Court and submitted and said Court thereupon duly made and gave its order sustaining said demurrer of the plaintiff, The Western Pacific Railroad Company, and granting the defendant twenty (20) days within which to file an amended answer; that thereafter, on the 6th day of June, 1917, the defendant served and filed its amended answer in said cause; that thereafter, on the 16th day of June, 1917, the plaintiff served and filed its general demurrer to said amended answer on the ground that said amended answer did not state facts sufficient to constitute a defense or counterclaim; that on said 16th day of June, 1917, plaintiff served and filed its motion for judgment on the pleadings on the ground that said amended answer did not state [4] facts sufficient to constitute a defense or counterclaim and that said amended answer was substantially the same in its allegations as the original answer on file herein; that thereafter, on the 9th day of July, 1917, said demur-

rer to the amended complaint and said motion for judgment on the pleadings duly and regularly came on to be heard, and thereupon counsel for defendant, Pacific Mail Steamship Company, in open court, confessed the demurrer to said amended answer; that thereupon the Court granted defendant twenty (20) days within which to file a second amended answer to the complaint on file herein; that thereafter, on the 3d day of August, 1917, the defendant served and filed its second amended answer to the complaint on file herein; that thereafter, on the 13th day of August, 1917, the plaintiff served and filed its general demurrer to said second amended answer on the ground that said second amended answer did not state facts sufficient to constitute a defense or counterclaim and served and filed its motion for a judgment on the pleadings on the ground that said second amended answer admitted that there was due, owing and unpaid from the defendant to the plaintiff the sum of $7,341.46 as prayed for in said complaint and that said second amended answer did not state facts sufficient to constitute a defense or counterclaim; that thereafter, on the 27th day of August, 1917, said demurrer and motion for judgment on the pleadings duly and regularly came on to be heard and that the same were argued by the respective counsel for both parties before said Court and duly submitted to the Court for consideration and decision; that thereupon, after due deliberation thereon, the Court duly made and gave its order wherein and whereby said Court sustained the said demurrer of the plaintiff to the said second amended answer of the defendant

without granting defendant leave to amend said second amended answer and granted the motion of plaintiff for judgment on the pleadings and ordered that judgment be entered in favor of plaintiff in [5] accordance with the prayer of the complaint.

NOW, THEREFORE, on motion of A. P. Matthew, Esquire, one of the attorneys for said plaintiff,

IT IS ORDERED, ADJUDGED AND DECREED, that the plaintiff, The Western Pacific Railroad Company, a corporation, have and recover judgment against the defendant, Pacific Mail Steamship Company, a corporation, for the sum of $8,235.08 together with interest thereon at the rate of 7% per annum until paid, and costs of suit in the sum of $19.20.

Judgment entered August 27th, 1917.

WALTER B. MALING,
Clerk,
By J. A. Schaertzer,
Deputy Clerk.

A true copy.

[Seal] Attest: WALTER B. MALING,
Clerk,
By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed August 27, 1917. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [6]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 16,021.

THE WESTERN PACIFIC RAILROAD COMPANY,

Complainant,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED: That the above-entitled action was commenced by the filing of the complaint of plaintiff therein, in the office of the clerk of said Court and the issuance of a summons thereon by said clerk addressed to the defendant in form and substance as required by law, on the 10th day of November, 1916; that said Complaint with a copy of the Summons issued thereon attached thereto was duly served upon defendant.

1. December 12, 1916, defendant duly filed and served its answer to said complaint, duly verified; the following (omitting therefrom the title of court and cause and verification) is a true copy of said answer, viz:

Answer of Pacific Mail Steamship Company.

Now comes the above-named defendant, Pacific Mail Steamship Company, by Knight & Heggerty,

its attorneys, and for answer to the complaint in said action:

(1) Denies, that during the month of November, 1915, or at any other time, there became or was due from or payable to the said Frank G. Drum and Warren Olney, Jr., or either of them, as Receivers, or otherwise, or at all, the sum of $7,341.46, or any other sum or amount exceeding the sum of $5,233.08, for or as or of money had or received by the defendant, or for the use or benefit [7] of the said Frank G. Drum and Warren Olney, Jr., or either of them as such Receivers, or at all; or otherwise than and except as set out and stated herein in the separate answer of defendant.

(2) Alleges that in November, 1915, the defendant was and ever since has been and is now, willing and ready and in said month offered to pay to plaintiff the said sum of $5,233.08; and that the plaintiff then refused and ever since has refused and now does refuse to receive or accept said sum of $5,233.08, unless defendant would pay plaintiff the sum of $2,069.-25, which plaintiff then and ever since owed and was indebted to defendant and refused to and had not and has not paid.

FOR A SEPARATE ANSWER TO SAID COMPLAINT, AND AS AN OFFSET TO AND AGAINST THE DEMAND OF PLAINTIFF the defendant alleges:

1. That the defendant at all times stated in the Complaint and herein was a corporation duly created and existing under the laws of the State of New

York, and engaged in the foreign trade of the United States and in the business of transporting passengers and cargo upon the Pacific Ocean, between the ports of San Francisco, California, and Manila, Hong Kong, Shanghai, Kobe, and other ports in China and Japan; and that the plaintiff during all of said times was and now is a corporation duly created and acting under the laws of the State of California, and engaged in the business of carrying passengers and freight by railroad between San Francisco, California, and Salt Lake, Utah, and connecting with other interstate railroads through the United States.

2. Defendant avers upon information and belief, that at all times during the years 1911, 1912 and 1913, the plaintiff had prepared, published and filed and had on file in the office of and with the Interstate Commerce Commission, its printed "Terminal Tariff G. F. D. No. 35–B," and in the year 1914, up to September 1, 1915, its "Terminal Tariff G. F. D. No. 35–8," stating [8] and naming "Absorptions, –*–State Toll, –*– and other Terminal Charges, privileges, etc., at all points on line of Western Pacific Railway Company," wherein and whereby it did publish, provide and agree as follows: "Absorption of Terminal Charges on Import, Export and Coastwise Traffic at San Francisco, and Oakland (Western Pacific Mole), Cal.

"1. The rates as shown to and from San Francisco, Cal., in the Western Pacific Ry. Company's tariffs, or tariffs in which the Western Pacific Ry. Company, is shown as a participating carrier, and which are lawfully on file with the Interstate Com-

merce Commission, include originating or delivery services of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines), or the State Belt Ry., to or from wharves served by those roads, respectively, on all traffic originating at, destined to or routed via points in Alaska, Australia, China, Hawaiian Islands, Japan, Philippine Islands, New Zealand, South America, and ports upon the Pacific Coast, Albion, Cal., and north thereof on the one hand, and on the other hand, originating at or destined to Ogden and Salt Lake City, Utah, and points east thereof.

The following absorptions will be made when this Company receives the line haul, viz.:

AT SAN FRANCISCO, CAL.: This Company will absorb switching charge of $2.50 per car for switching freight, carloads, *to or from wharves served by the Southern Pacific Company,* the Atchison, Topeka & Santa Fe Ry. (Coast Lines) and State Belt Railway; *also will absorb* State Toll. Loading and unloading charges will also be absorbed except on Lumber and its Products. (See Note.)

AT OAKLAND (WESTERN PACIFIC MOLE), CAL: This Company will absorb wharfage and handling charges on all freight except Lumber and its products and Empty Carriers returned. (See Note.)

2. On all competitive traffic, except as provided for in Paragraph No. 1, received from *or delivered to vessels at wharves of the Southern Pacific Company, Atchison, Topeka & Santa Fe Ry.* [9] *Co.* (Coast Lines) or State Belt Ry., at San Francisco, Cal., this

Company will absorb switching charge of $2.50 per car; *also will absorb* State Toll."

And effective September 1, 1915, its "Supplement No. 6, to Terminal Tariff G. F. D. No. 35–E," on the same subject, as follows:

"1. The rates as shown to and from San Francisco, Cal., in the Western Pacific Ry's tariffs, or tariffs in which the Western Pacific Ry. is shown as a participating carrier, and which are lawfully on file with the Interstate Commerce Commission, include originating or delivery services of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines), or the State Belt Ry., to or from the wharves served by those roads, respectively, on all traffic originating at, destined to or routed via points in Alaska, Australia, China, Hawaiian Islands, Japan, Philippine Islands, New Zealand, South America, and ports upon the Pacific Coast, Albion, Cal., and north thereof on the one hand, and on the other hand, originating at or destined to Ogden, Salt Lake City, or Garfield, Utah, and points east thereof.

The following absorptions will be made when the Western Pacific Ry. receives the line haul, viz.:

At San Francisco, Cal.: The Western Pacific Ry. will absorb switching charge of $2.50 per car for switching freight, carloads, to or from wharves served by the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. (Coast Lines) and State Belt Railway; also will absorb State Toll. Loading and unloading charges will also be absorbed except on Lumber and its Products. (See Note).

At Oakland (Western Pacific Mole), Cal.: The

Western Pacific Ry. will absorb wharfage and handling charges on all freight except Lumber and its Products and Empty Carriers returned. (See Note.)

2. On all competitive traffic, except as provided for in Paragraph No. 1, received from or delivered to vessels at [10] wharves of the Southern Pacific Company (Piers 42 and 44) or Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines) (Pier 54, at San Francisco, Cal., the Western Pacific Ry. will absorb switching charge of $2.50 per car; *also will absorb State Toll."*

3. That during the years 1911. 1912, 1913, 1914 and 1915, the defendant received in the Orient, and carried across the Pacific Ocean and delivered to the plaintiff at San Francisco, California, import cargo routed over the line and road of plaintiff, 5,679 tons of cargo and 2,459 bales of wool, and the plaintiff delivered to and defendant received from plaintiff at the wharf and piers of defendant in San Francisco, California, 28,296 tons of export cargo and 22,241 bales of export wool, which defendant carried across the Pacific Ocean and delivered for the plaintiff; that the defendant paid the State Tolls for plaintiff on said import and export cargo of five cents per ton, amounting to $1,698.75, and on said import and export wool of one and one-half cents per bale, amounting to $370.50, a total of $2,069.25; and defendant also paid the freight for plaintiff on 30 packages carried by Defendant and delivered to plaintiff; making a total of $2,108.38, no part of which plaintiff had ever paid up to November, 1915.

4. That in November, 1915, the defendant collected the freight on and received at Manila for transportation on its steamship "Mongolia" across the Pacific Ocean and delivery to the plaintiff 1464 Drums of Cocoanut Oil destined from Manila to Chicago, and routed over the line and road of the plaintiff from San Francisco, California, and delivered the said oil to Plaintiff at San Francisco; the proportion of the freight thereon due the plaintiff and collected at Manila by defendant, was $7,341 46, being computed on 1,468,291 pounds at 50¢; and the defendant at the same time carried 30 cases of merchandise on and for which the plaintiff owned and was indebted to defendant in the sum of $39.13.

5. That defendant, in November, 1915, retained out of said $7,341.46, and applied and appropriated to the payment of the [11] said sum of $2,069.25 due and payable by plaintiff to defendant and no part of which plaintiff had up to that time ever paid to defendant for the said state tolls payable by plaintiff under its said tariffs and which State tolls had been as aforesaid paid by defendant to the State Board of Harbor Commissioners for the port of San Francisco, California, and also said freight charge of $39.13, a total of $2,108.38, and tendered and offered to pay to the plaintiff the balance and remainder of said $7,341.46, to wit: the sum of $5,-233.08; that plaintiff refused and ever since has refused to receive or accept payment from defendant of said balance and remainder of said $7,341.46, to wit: the said sum of $5,233.08; and that the defendant always has been and is now ready and willing

and hereby and now offers to pay to said plaintiff the said sum and balance of $5,233.08.

6. The defendant is ready and willing and able, and hereby offers and tenders payment to plaintiff of the said sum of $5,233.08, such payment to be made by defendant and received by plaintiff without prejudice in any way, manner or form, legal or equitable, to any and all of the legal and equitable rights of the plaintiff to assert and insist upon its claim in this action and to any and all of the legal rights of the defendant to assert and insist upon its claim in this action to offset against said $7,341.46 the said claim and demand of defendant to retain, apply and appropriate as it did, the said sum of $2,108.38 to the repayment to and reimbursement of defendant for the said sum of $2,069.25 for said State Tolls paid by Defendant and said $39.13 for said freight so carried as aforesaid by defendant; and to make its offer and tender good, defendant hereby offers to deposit with plaintiff said sum of $5,233.08, instead of in the Court, with the absolute right of the plaintiff to use and apply said $5,233.08 to its own use, as it shall see fit, and without any right or claim by defendant on or to said $5,233.08. [12]

7. That the said outward bound export freight delivered to defendant and inward-bound import freight delivered to plaintiff as aforesaid was delivered by plaintiff at and to defendant's vessels at piers 42 and 44, and the wharves of the Southern Pacific Company, Atchison, Topeka and Santa Fe Ry. Co. (Coast Lines) or State Belt Ry. at San Francisco, Cal., mentioned and stated in said Ter-

minal Tariffs G. F. D. No. 35–D, and G. F. D. No. 35–E, as aforesaid, include the said Piers 42 and 44, at and from which the vessels of defendant received said export cargo from plaintiff and delivered said import cargo to defendant; and that said State Tolls so paid by defendant were and are the State tolls which under said Terminal Tariffs were to be charged to, paid and absorbed by plaintiffs as and for a part and portion of and included in its legal, published scheduled rates and tariffs filed by plaintiff with the United States Interstate Commerce Commission.

WHEREFORE: Defendant prays the judgment of the Court that plaintiff take nothing by its complaint, that there be offset, awarded and adjudged to defendant the said sum of $2,108.38, as against and from the said claim and demand for $7,341.46 made in said complaint by plaintiff; and for such other and further relief, both general and special as shall be just and proper in the premises.

Dated December 11th, 1916.

KNIGHT & HEGGERTY,
Attorneys for Defendant.

2. December 22, 1916, plaintiff duly filed and served its demurrer to said answer; the following (omitting therefrom the title of court and cause, certificate of counsel thereto and admission of service) is a true copy of said demurrer, viz.: [13]

Demurrer to Answer.

Now comes the plaintiff above named and demurs to the answer on file herein and for cause of demurrer specifies:

I.

That said answer does not state facts sufficient to constitute a defense.

II.

That said answer does not state facts sufficient to constitute a counterclaim.

III.

That the first alleged defense in said answer contained does not state facts sufficient to constitute a defense.

IV.

That the first alleged defense in said answer contained does not state facts sufficient to constitute a counterclaim.

V.

That the second alleged defense in said answer contained does not state facts sufficient to constitute a defense.

VI.

That the second alleged defense in said answer contained does not state facts sufficient to constitute a counterclaim.

WHEREFORE, plaintiff prays judgment against defendant as prayed for in the complaint on file herein.

A. R. BALDWIN,
A. P. MATTHEW,
Attorneys for Plaintiff. [14]

3. Thereafter, after argument and due consideration by said Court, said demurrer was sustained, and defendant was granted leave to file an amended answer.

4. June 6, 1917, defendant duly filed and served its amended answer to said complaint, duly verified; the following (omitting therefrom the title of court and cause, verification and admission of service) is a true copy, viz.:

Amended Answer of Pacific Mail Steamship Company.

Now comes the above-named defendant, Pacific Mail Steamship Company, by Knight & Heggerty, its attorneys, and for its amended answer to the complaint in said action filed by leave of Court first had, defendant,

(1) Denies, that during the month of November, 1915, or at any other time, there became or was due from or payable to the said Frank G. Drum and Warren Olney, Jr., or either of them, as Receivers, or otherwise, or at all, the sum of $7,341.46, or any other sum or amount exceeding the sum of $5,233.08, for or as or of money had or received by the defendant, or for the use or benefit of the said Frank G. Drum and Warren Olney, Jr., or either of them as such Receivers, or at all; and defendant alleges that the facts are as set out and stated herein in the Separate Answer of Defendant.

(2) Alleges that in November, 1915, the defendant was and ever since has been and is now willing and ready and in said month offered to pay to plaintiff and tendered to plaintiff the said sum of $5,233.08; and that the plaintiff then refused and ever since has refused and now does refuse to receive or accept said sum of $5,233.08, unless defendant would pay plaintiff the sum of $2,069.25, which plaintiff

then and ever since owed and was indebted [15] to defendant and which sum the plaintiff refused to and has not *and has not* paid to defendant.

For a separate answer to said complaint, and as an offset to and against the demand of plaintiff, the defendant alleges:

1. That the defendant at all times stated in the complaint and herein was a corporation duly created and existing under the laws of the State of New York, and engaged in the foreign trade of the United States and in the business of transporting passengers and cargo upon the Pacific Ocean, between the ports of San Francisco, California, and Manila, Hong Kong, Shanghai, Kobe, and other ports in China and Japan; and that the plaintiff during all of said times was and now is a corporation duly created and acting under the laws of the State of California, and engaged in the business of carrying passengers and freight by railroad between San Francisco, California, and Salt Lake, Utah, and connecting with other interstate railroads through the United States.

2. Defendant avers upon information and belief, that at all times during the years 1911, 1912 and 1913, the plaintiff had prepared, adopted, published and filed and had on file in the office of and filed with the Interstate Commerce Commission, as required by the laws of the United States, its printed "Terminal Tariff G. F. D. No. 35–D," and in and during the year, 1914, up to September 1, 1915, its printed "Terminal Tariff G. F. D. No. 35–8," stating and naming "Absorptions,"—*—State Toll,—*—and other Ter-

minal Charges, privileges, etc., at all points on line of Western Pacific Railway Company," wherein and whereby it did publish, provide and agree as follows: "Absorption of Terminal Charges on Import, Export and Coastwise Traffic at San Francisco, and Oakland (Western Pacific Mole), Cal. [16]

"1. The rates as shown to and from San Francisco, Cal., in the Western Pacific Ry. Company's tariffs, or tariffs in which the Western Pacific Ry. Company is shown as a participating carrier, and which are lawfully on file with the Interstate Commerce Commission, include originating or delivery services of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines), or the State Belt Ry., to or from wharves served by those roads, respectively, on all traffic originating at, destined to or routed via points in Alaska, Australia, China, Hawaiian Islands, Japan, Philippine Islands, New Zealand, South America, and ports upon the Pacific Coast, Albion, Cal., and north thereof on the one hand, and on the other hand, originating at or destined to Ogden and Salt Lake City, Utah, and points east thereof.

"The following absorptions will be made when this Company receives the line haul, viz.:

"At San Francisco, Cal. This Company will absorb switching charge of $2.50 per car for switching freight, carloads, *to or from wharves served by the Southern Pacific Company,* the Atchison, Topeka & Santa Fe Ry (Coast Lines) and State Belt Railway; *also will absorb* State Toll. Loading and unloading charges will also be absorbed except on Lum-

ber and its Products. (See Note).

"At Oakland (Western Pacific Mole), Cal.: This Company will absorb wharfage and handling charges on all freight except Lumber and its products and Empty Carriers returned. (See Note).

"2. On all competitive traffic, except as provided for in Paragraph No. 1, received from *or delivered to vessels at wharves of the Southern Pacific Company, Atchison, Topeka & Santa Fe Ry. Co.* (Coast Lines) or State Belt Ry., at San Francisco, Cal., this company will absorb switching charge of $2.50 per car; *also will absorb* State Toll."

And effective September 1, 1915, its printed "Supplement No. 6, to Terminal Tariff, G. F. D. No. 35–E," on [17] the same subject, as follows:

"1. The rates as shown to and from San Francisco, Cal., in the Western Pacific Rys. tariffs, or tariffs in which the Western Pacific Ry. is shown as a participating carrier, and which are lawfully on file with the Interstate Commerce Commission, include originating or delivery services of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines), or the State Belt Ry., to or from the wharves served by those roads, respectively, on all traffic originating at, destined to or routed via points in Alaska, Australia, China, Hawaiian Islands, Japan, Philippine Islands, New Zealand, South America, and ports upon the Pacific Coast, Albion, Cal., and north thereof on the one hand, and on the other hand, originating at or destined to Ogden, Salt Lake City, or Garfield, Utah, and points east thereof.

"The following absorptions will be made when the Western Pacific Ry. receives the line haul, viz.:

"*At San Francisco, Cal.*: The Western Pacific Ry. will absorb switching charge of $2.50 per car for switching freight, carloads, to or from wharves served by the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. (Coast Lines) and State Belt Railway; also will absorb State Toll. Loading and unloading charges will also be absorbed except on Lumber and its Products. (See Note.)

"*At Oakland (Western Pacific Mole), Cal.*: The Western Pacific Ry. will absorb wharfage and handling charges on all freight except Lumber and its Products and Empty Carriers returned. (See Note.)

"2. On all competitive traffic, except as provided for in Paragraph No. 1, received from or delivered to vessels at wharves of the Southern Pacific Company (Piers 42 and 44) or Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines) (Pier 54), at San Francisco, Cal., the Western Pacific Ry. will absorb switching charge of $2.50 per car; *also will absorb State Toll.*" [18]

3. Defendant alleges upon information and belief, that the plaintiff and defendant at and during all of said time had agreed upon a sum and amount which was to constitute and be the through total rate upon the cargo hereinafter referred to, and upon the amount of the apportionment of said total rate between the plaintiff and defendant, on all cargo received by defendant from the plaintiff at piers 42 and/or 44 to be carried by defendant to Oriental

points and on all cargo carried by defendant from Oriental pionts to said piers 42 and 44 to be delivered to plaintiff as a connecting and participating carrier, and that plaintiff would absorb the State tolls of defendant on all such cargo, and plaintiff filed the same as aforesaid with the said Interstate Commerce Commission and published the same as required by law, and also the concurrence of the defendant therein; that thereunder and under said terminal tariff schedules the State tolls upon said cargo, both outgoing and incoming at piers 42 and 44, and upon all other cargo where the plaintiff was a participating or connecting carrier received from or delivered to the defendant by the plaintiff, were to be and should be absorbed out of the plaintiff's share and part of the through rate of freight upon said cargo as shown by the said Terminal Tariffs of the plaintiff, so published and filed with said commission, and agreed to as to the amount and apportionment of the through rate of freight upon said cargo destined to and received from oriental points; and that the said agreement by plaintiff in said tariffs that plaintiff would "absorb State toll" was incorporated therein to enable and permit the plaintiff under the law to include the same in the amount of its rate for such freight and collect the same from the shipper and/or consignee of the cargo, which the plaintiff did; and on all said cargo the plaintiff did include in and collect from the shipper and/or consignee as a part of the rate and charge of the plaintiff for the [19] land hauled of said cargo as the participating and connecting carrier of said cargo to and from the

vessels of defendant at said piers 42 and/or 44, and retained the amount of the State tolls chargeable upon said cargo, and never did pay any part thereof to the defendant; and that the said sum and amount paid by defendant for State toll as herein stated, was paid by defendant to and for the use and benefit of the defendant, and at its special instance and request, and the amount thereof which would or should be so paid by defendant for said State toll the plaintiff in and under its said agreement in said tariffs, promised and agreed to repay to defendant; and that the apportionment of the rate of freight upon said cargo to be paid to and received by defendant and said plaintiff, was agreed upon by plaintiff and defendant upon the basis of the said tariffs of plaintiff and the concurrence therein of defendant, and said cargo was received and carried by defendant under said agreement and understanding.

4. That during the years 1911, 1912, 1913, 1914 and 1915, the defendant received in the Orient, and carried across the Pacific Ocean and delivered at said piers 42 and 44, to the plaintiff, at San Francisco, California, under said tariffs and concurrence therein, import cargo routed over the line and road of plaintiff, 5,679 tons of cargo and 2,459 bales of wool, and the plaintiff delivered to and defendant received from plaintiff at the said piers 42 and 44 of defendant in San Francisco, California, under said tariffs and concurrence therein, 28,296 tons of export cargo and 22,241 bales of export wool, which defendant carried across the Pacific Ocean and delivered in the Orient for the plaintiff; that under the rules of the

Board of State Harbor Commissioners for the port of San Francisco, the tolls for cargo received on board from and delivered on said piers 42 and 44, from the vessels of defendant, were required to be paid by the vessel receiving or discharging such cargo, and accordingly [20] and for the plaintiff and the use and benefit of the plaintiff, the defendant paid the State tolls for plaintiff on said import and export cargo of five cents per ton, amounting to $1,698.75, and on said import and export wool of one and one-half cents per bale, amounting to $370.50, a total of $2,069.25; and defendant also paid the freight for plaintiff on 30 packages carried by defendant and delivered to plaintiff; making a total of $2,108.38, no part of which plaintiff had ever paid up to November, 1915, nor since except as hereinafter stated.

5. That in November, 1915, the defendant collected the freight on and received at Manila for transportation on its steamship "Mongolia" across the Pacific Ocean and delivery to the plaintiff 1464 drums of cocoanut oil, destined from Manila to Chicago, and routed over the line and road of the plaintiff from San Francisco, California, and delivered the said oil to plaintiff at San Francisco; the proportion of the freight thereon due the plaintiff and collected at Manila by defendant, was $7,341.46, being computed on 1,468,291 pounds at 50¢; and the defendant at the same time carried 30 cases of merchandise on and for which the plaintiff owed and was indebted to defendant in the sum of $39.13.

6. That defendant, in November, 1915, retained out of said $7,341.46, and applied and appropriated

to the payment of the said sum of $2,069.25 due and payable by plaintiff to defendant and no part of which plaintiff had up to that time ever paid to defendant for the said State tolls payable by plaintiff under its said tariffs and which State tolls had been as aforesaid paid by defendant to the State Board of Harbor Commissioners for the port of San Francisco, California, and also said freight charge of $39.13, a total of $2,108.38, and tendered and offered to pay to the plaintiff the balance and remainder of said $7,341.46, to wit: the sum of $5,233.08; that plaintiff refused and ever since has [21] refused to receive or accept payment from defendant of said balance and remainder of said $7,341.46, to wit, the said sum of $5,233.08; and that the defendant always has been and is now ready and willing and hereby and now offers to pay to said plaintiff the said sum and balance of $5,233.08.

7. The defendant is ready and willing and able, and hereby offers and tenders payment to plaintiff of the said sum of $5,233.08, such payment to be made by defendant and received by plaintiff without prejudice in any way, manner or form, legal or equitable, to any and all of the legal and equitable rights of the plaintiff to assert and insist upon its claim in this action and to any and all of the legal rights of the defendant to assert and insist upon its claim in this action to offset against said $7,341.46 the said claim and demand of defendant to retain, apply and appropriate as it did, the said sum of $2,108.38 to the repayment to and reimbursement of defendant for the sum of $2,069.25 for said State

Tolls paid by defendant and said $39.13 for said freight so carried as aforesaid by defendant; and to make its offer and tender good, defendant hereby offers to deposit with plaintiff said sum of $5,233.08, instead of in the court, with the absolute right of the plaintiff to use and apply said $5,233.08 to its own use, as it shall see fit, and without any right or claim by defendant on or to said $5,233.08.

8. That the said outward bound export freight delivered to defendant and inward bound import freight delivered to plaintiff as aforesaid was delivered by plaintiff at and to defendant's vessels at piers 42 and 44, and the wharves of the Southern Pacific Company, Atchison, Topeka and Santa Fe Ry. Co. (Coast Lines) or State Belt Ry. at San Francisco, Cal., mentioned and state in said Terminal Tariffs G. F. D. 35–D, and G. F. D. No. 35–E, as aforesaid, include the said piers 42 and 44, at and from which the vessels of defendant received said export cargo from plaintiff and delivered said import cargo to defendant; and that said State Tolls [22] so paid by defendant were and are the State tolls which under said Terminal Tariffs were to be charged to and absorbed by plaintiff as and for a part and portion of its proportion of said through rate and were included in its said legal published Schedule rates and tariffs filed by plaintiff with the United States Interstate Commerce Commission.

WHEREFORE: Defendant prays the judgment of the Court that plaintiff take nothing by its complaint, that there be offset, awarded and adjudged

to defendant and that defendant have and recover the said sum of $2,108.38, as against and from and out of the said claim and demand for $7,341.46 made in said complaint by plaintiff; and for such other and further relief, both general and special, as shall be just and proper in the premises.

Dated June 4, 1917.

KNIGHT & HEGGERTY,
Attorneys for Defendant.

5. June 16, 1917, the plaintiff duly served and filed its demurrer to said amended answer; the following (omitting therefrom the title of court and cause, certificate of counsel thereto and admission of service) is a true copy of said demurrer, to wit:

Demurrer to Amended Answer.

Now comes the plaintiff above named and demurs to the amended answer on file herein and for cause of demurrer specifies:

I.

That said amended answer does not state facts sufficient to constitute a defense.

II.

That said amended answer does not state facts sufficient to constitute a counterclaim. **[23]**

III.

That the first alleged defense in said amended answer contained does not state facts sufficient to constitute a claim.

IV.

That the first alleged defense in said amended answer contained does not state facts sufficient to

constitute a counterclaim.

V.

That the second alleged defense in said amended answer contained does not state facts sufficient to constitute a defense.

VI.

That the second alleged defense in said amended answer contained does not state facts sufficient to constitute a counterclaim.

WHEREFORE, plaintiff prays judgment against defendant as prayed for in the complaint on file herein.

A. R. BALDWIN,
A. P. MATTHEW,
Attorneys for Plaintiff.

6. Thereafter, on July 9th, 1917, the defendant, in open court confessed said demurrer to said amended answer, and defendant was granted leave to serve and file its Second Amended Answer.

7. August 3, 1917, the defendant duly served and filed its second amended answer to said complaint, duly verified; the following (omitting therefrom the title of court, cause, verification and admission of service) is a true copy of said second amended answer, viz.: **[24]**

Second Amended Answer of Pacific Mail Steamship Company.

Now comes the above-named defendant, Pacific Mail Steamship Company, by Knight & Heggerty, its Attorneys, and for its second amended answer to

the complaint in said action filed by leave of Court first had, defendant,—

(1) Denies that during the month of November, 1915, or at any other time, there became or was due from or payable to the said Frank G. Drum and Warren Olney, Jr., or either of them, as Receivers, or otherwise, or at all, the sum of $7,341.46, or any other sum or amount exceeding the sum of $5,233.08, for or as or of money had or received by the defendant for the use and benefit or for the use or benefit of the said Frank G. Drum and Warren Olney, Jr., or either of them as such Receivers, or at all; and defendant alleges that the facts are as set out and stated herein in the separate answer of defendant.

(2) Alleges that in November, 1915, the defendant was and ever since has been and is now willing and ready and in said month offered to pay to the said Receivers and to plaintiff and tendered to the said Receivers and to plaintiff the said sum of $5,233.08; and that the said Receivers refused and the plaintiff then refused and ever since has refused and now does refuse to receive or accept the said sum of $5,233.08, unless defendant would pay plaintiff the sum of $2,069.25, which said sum of $2,069.25 said Receivers and plaintiff then and ever since owed and now owes, and in which sum said Receivers and plaintiff then were and plaintiff is now indebted to defendant and which said sum of $2,069.25 the said Receivers and the plaintiff refused to and had not and have not paid to defendant and have not paid any part thereof. **[25]**

FOR A SEPARATE ANSWER TO SAID COMPLAINT, AND AS AN OFFSET TO AND AGAINST THE DEMAND OF PLAINTIFF the defendant alleges:

1. That the defendant at all times stated in the Complaint and herein was a corporation duly created and existing under the laws of the State of New York, and engaged in the foreign trade of the United States and in the business of transporting passengers and cargo upon the Pacific Ocean, between the ports of San Francisco, California, and Manila, Hong Kong, Shanghai, Kobe, and other ports in China and Japan, and cargo destined thereto and/or carried therefrom on vessels of defendant was received and discharged at piers 42 and/or 44, hereinafter mentioned; and that the plaintiff during all of said times was and now is a corporation duly created and acting under the laws of the State of California, a common carrier of freight and passengers by railroad, and engaged in the business of carrying passengers and freight between San Francisco, California, and Salt Lake, Utah, and connecting with other interstate railroads through the United States; and that the traffic hereinafter stated was, "Competitive Traffic" under the Terminal Tariffs of plaintiff hereinafter stated.

2. Defendant avers, that at all times during the years 1911, 1912 and 1913, the plaintiff had prepared, adopted, published and filed and had on file in the office of and filed with the Interstate Commerce Commission, as required by the laws of the United States, and the rules and regulations of said

Commission, its printed "Terminal Tariff G. F. D. No. 35–D," and during the year 1914 up to March 26, 1916, its printed "Terminal Tariff G. F. D. No. 35–E," stating and naming "Absorptions—*—State Toll—*—and other Terminal Charges, privileges, etc., at all points on line of Western Pacific Railway Company," wherein and whereby it did publish, provide and agree among other things, as follows:—"Absorption of Terminal Charges on Import, Export and Coastwise Traffic at San Francisco and Oakland (Western Pacific Mole), Cal. **[26]**

"1. The rates as shown to and from San Francisco, Cal., in the Western Pacific Ry. Company's Tariffs, or tariffs in which the Western Pacific Ry. Company is shown as a participating carrier, and which are lawfully on file with the Interstate Commerce Commission, include originating or delivery services of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines), or the State Belt Ry., to or from wharves served by those roads, respectively, on all traffic originating at, destined to or routed via points in Alaska, Australia, China, Hawaiian Islands, Japan, Philippine Islands, New Zealand, South America, and ports upon the Pacific Coast, Albion, Cal., and north thereof on the one hand, and on the other hand, originating at or destined to Ogden and Salt Lake City, Utah, and points east thereof.

"The following absorptions will be made when this Company receives the line haul, viz.:—

"At San Francisco, Cal. This Company will absorb switching charge of $2.50 per car for switching

freight, carloads, *to or from wharves served by the Southern Pacific Company,* the Atchison, Topeka & Santa Fe Ry. (Coast Lines) and State Belt Railway; *also will absorb State Toll.* Loading and unloading charges will also be absorbed except on Lumber and its Products.

"At Oakland (Western Pacific Mole), Cal.: This Company will absorb wharfage and handling charges on all freight except lumber and its products and empty carriers returned.

"2. On all competitive traffic, except as provided for in Paragraph No. 1, received from *or delivered to vessels at wharves of the Southern Pacific Company, Atchison, Topeka & Santa Fe Ry. Co.* (Coast Lines) or State Belt Ry., at San Francisco, Cal., this company will absorb switching charge of $2.50 per car; *also will absorb State Toll.*"

And effective September 1, 1915, its printed "Supplement No. 6, to Terminal Tariff, G. F. D. No. 35–E," on the same **[27]** subject, as follows:

"1. The rates as shown to and from San Francisco, Cal. in the Western Pacific Ry.'s tariffs, or tariffs in which the Western Pacific Ry., is shown as a participating carrier, and which are lawfully on file with the Interstate Commerce Commission, include originating or delivery services of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines), or the State Belt Ry., to or from the wharves served by those roads, respectively, on all traffic originating at, destined to or routed via. points in Alaska, Australia, China, Hawaiian Islands, Japan, Philippine Islands, New

Zealand, South America, and ports upon the Pacific Coast, Albion, Cal., and north thereof on the one hand, and on the other hand, originating at or destined to Ogden, Salt Lake City, or Garfield, Utah, and points east thereof.

"The following absorptions will be made when the Western Pacific Ry, receives the line haul, viz.:—

"*At San Francisco, Cal.;* The Western Pacific Ry. will absorb switching charge of $2.50 per car for switching freight, carloads, to or from wharves served by the Southern Pacific Company, the Atchison, Topeka & Santa Fe Ry. (Coast Lines) and State Belt Railway; also will absorb State Toll Loading and unloading charges will also be absorbed except on Lumber and its Products.

"*At Oakland (Western Pacific Mole), Cal.* The Western Pacific Ry. will absorb wharfage and handling charges on all freight except Lumber and its Products and Empty Carriers returned.

"2. On all competitive traffic, except as provided for in Paragraph No. 1, received from or delivered to vessels at wharves of the Southern Pacific Company (Piers 42 and 44) or Atchison, Topeka & Santa Fe Ry. Co. (Coast Lines) (Pier 54), at San Francisco, Cal. the Western Pacific Ry. will absorb switching charge of $2.50 per car; *also will absorb State Toll.*"
[28]

That the foregoing Terminal Tariffs were by plaintiff at all times as aforesaid herein mentioned duly and legally made, published and filed with the Interstate Commerce Commission as required by

law and the rules of said commission, for the inland or rail carriage of import and export cargo—and of competitive traffic by plaintiff and said Receivers when cargo was received from defendant by plaintiff and said Receivers at said piers 42 and/or 44 and when cargo was delivered to defendant by plaintiff at said piers 42 and 44.

3. That during the years 1911, 1912, 1913, 1914 and 1915, the defendant received in the Orient, and carried across the Pacific Ocean and delivered at said piers 42 and 44, to the plaintiff, and during the year 1915, after March 4, 1915, to said plaintiff and said Receivers, at San Francisco, California, under said tariffs, import cargo routed over the line and road of plaintiff, 5679 tons of cargo and 2459 bales of wool, and the plaintiff delivered to and defendant received from plaintiff during said years 1911, 1912, 1913 and 1914, at the said piers 42 and 44 of defendant in San Francisco, California, under said tariffs, 28,296 tons of export cargo and 22,241 bales of export cotton, which defendant carried across the Pacific Ocean and delivered in the Orient for the plaintiff; that under the rules of the Board of State Harbor Commissioners for the port of San Francisco, the tolls for said cargo received on board from plaintiff and delivered on said piers 42 and 44, from the vessels of defendant for the plaintiff and for said Receivers, were required to be paid by the vessels of defendant receiving and/or discharging such cargo, and accordingly and for the plaintiff and the said Receivers and for the use and benefit of the plaintiff and said Receivers, the defendant paid the State

tolls for plaintiff and said Receivers, with the knowledge of plaintiff and said Receivers and according to the general custom then existing at the said port of San Francisco, on said import and export cargo of five cents per [29] ton, amounting to $1,698.75, and on said import and export wool and/or cotton of one and one-half cents per bale, amounting to $370.50, a total of $2,069.25; and defendant also paid the freight for plaintiff and said Receivers on 30 packages carried by defendant and delivered to plaintiff; making a total of $2,108.38, no part of which plaintiff or said Receivers had ever paid up to November, 1915, and no part of which has since been paid except as hereinafter stated.

4. That in November, 1915, the defendant collected the freight on and received at Manila for transportation on its steamship "Mongolia" across the Pacific Ocean and delivery to the plaintiff and said Receivers 1464 drums of cocoanut oil, destined from Manila to Chicago, and routed over the line and road of the plaintiff from San Francisco, California, and delivered the said oil to plaintiff and said Receivers at San Francisco, at said piers 42 and 44; and that the proportion of the freight thereon due the plaintiff and said Receivers and collected at Manila by defendant, was $7,341.46, being computed on 1,468,291 pounds at 50¢; and the defendant at the same time carried 30 cases of merchandise on and for which the plaintiff and said Receivers owed and were indebted to defendant in the sum of $39.13.

5. That defendant, in November, 1915, retained out of said $7,341.46, and applied and appropriated

to the payment of the said sum of $2,069.25 due and payable by plaintiff and said Receivers to defendant and no part of which plaintiff or said Receivers had ever paid to defendant for the said State tolls payable by plaintiff and said Receivers under its said tariffs and which State tolls had been as aforesaid paid by defendant to the State Board of Harbor Commissioners for the port of San Francisco, California, for the use and benefit of plaintiff and the said Receivers, and also said freight charge of $39.13, a total of $2,108.38, and tendered and offered to pay to the plaintiff and said Receivers the balance and remainder of said $7,341.46, to wit: **[30]** the sum of $5,233.08; that plaintiff and said Receivers then refused and ever since refused and now refuse to receive or accept payment from demendant of said balance and remainder of said $7,341.46, to wit: the said sum of $5,233.08; and that the defendant always has been and is now ready and willing to pay to plaintiff and said Receivers, and hereby and now offers to pay to said plaintiff the said sum and balance of $5,233.08.

6. The defendant is ready and willing and able, and hereby offers and tenders payment to plaintiff of the said sum of $5,233.08, such payment to be made by defendant and received by plaintiff without prejudice in any way, manner or form, legal or equitable, to any and/or all of the legal and equitable rights of the plaintiff to assert and insist upon its claim to said sum of $2,069.25 in this action and to any and all of the legal rights of the defendant to assert and insist upon its claim in this action to off-

set against said $7,341.46 the said claim and demand of defendant to retain, apply and appropriate as it did, the said sum of $2,108.38, to the repayment to and reimbursement of defendant for the sum of $2,069.25 for said State tolls so paid by defendant and said $39.13 for said freight so carried as aforesaid by defendant; and to make its offer and tender good, defendant hereby offers to pay to and/or deposit with plaintiff said sum of $5,233.08, with the absolute right of the plaintiff to use and apply said $5,233.08 to its own use, as it shall see fit, and without any right or claim by defendant on or to said $5,233.08, or for repayment thereof.

7. That the said outward bound export freight delivered to defendant by plaintiff and said inward bound import freight delivered to plaintiff and said Receivers by defendant as aforesaid, was delivered by plaintiff at and to and by defendant to plaintiff and said Receiver's from defendant's vessels at said piers 42 and 44; and the wharves served by and the wharves of the Southern Pacific Company, Atchison, Topeka and Santa Fe Ry. Co. (Coast lines) or **[31]** State Belt Ry. at San Francisco, Cal., mentioned and stated in said Terminal Tariffs G. F. D. No. 35–D, and G. F. D. 35–E, at which and upon which cargo as agreed and stated by plaintiff and said Receivers in the said tariffs, the plaintiff and said Receivers "also will absorb State Toll," as aforesaid, include the said piers 42 and 44, at and from which the vessels of defendant received said export cargo from plaintiff and delivered said import cargo to plaintiff and said Receivers; and that

said State tolls so paid by defendant were and are the State tolls which under and as stated in said Terminal Tariffs were to be charged to and absorbed by plaintiff and said Receivers as and for a part and portion of its proportion of said through rate and were included and stated in its said legal, published scheduled rates and tariffs filed by plaintiff with the United States Interstate Commerce, to be absorbed by plaintiff and said Receivers, as aforesaid.

WHEREFORE: Defendant prays the judgment of the Court that plaintiff take nothing by its complaint, that there be offset, awarded and adjudged to defendant and that defendant have and recover the said sum of $2,108.38, as against and from and out of the said claim and demand for $7,341.46 made in said complaint by plaintiff; and for such other and further relief, both general and special as shall be just and proper in the premises; and for its costs.

Dated July 28, 1917.

KNIGHT & HEGGERTY,
Attorneys for Defendant.

C. W. DURBROW,
Of Counsel for Defendant. [32]

8. August 13, 1917, the plaintiff duly served and filed its demurrer to said second amended answer, and also its motion for judgment on the pleadings; the following (omitting therefrom the title of court, cause, certificate of counsel thereto, and admission of service) and true copies of said demurrer to said second amended answer and said motion for judgment on the pleadings, viz.:

Notice of Motion for Judgment on the Pleadings.

To the Defendant Herein, Pacific Mail Steamship Company, a Corporation, and to Knight & Heggarty, Its Attorneys:

You and each of you will hereby take notice that on Monday, the 20th day of August, 1917, at the hour of ten o'clock A. M. of said day, or as soon thereafter as counsel can be heard, the above-named plaintiff, The Western Pacifis Railroad Company, will move said court at the courtroom thereof, in the Postoffice Building, at the corner of Seventh and Mission Streets, in the city and county of San Francisco, State of California, for an order for a judgment for plaintiff on the pleadings on file herein.

Said motion will be made upon the ground that the defendant, in and by its second amended answer on file herein, admits that there is due, owing and unpaid from the defendant to the plaintiff the sum of $7,341.46, as prayed for in the complaint, and that the said second amended answer does not state facts sufficient to constitute a defense to the cause of action, or any portion thereof, stated in the complaint on file herein, and that the said second amended answer does not state facts sufficient to constitute a counterclaim to the cause of action, or any portion thereof, stated in the complaint on file herein.

Said motion will be made upon the further ground that the said second amended answer is substantially the same in its allegations [33] as the original answer on file herein.

Said motion will be based upon all the records, pleadings, files and papers in the above-entitled action and upon this notice of motion, and particularly upon the original answer on file herein and the demurrer to said original answer and upon the amended answer on file herein and the demurrer to said amended answer, which said papers will be used on the hearing of this motion.

A. R. BALDWIN,
ALLAN P. MATTHEW,
Attorneys for Plaintiff.

Demurrer to Second Amended Answer.

Now comes the plaintiff above named and demurs to the second amended answer on file herein and for cause of demurrer specifies:

I.

That said second amended answer does not state facts sufficient to constitute a defense.

II.

That said second amended answer does not state facts sufficient to constitute a counterclaim.

III.

That the first alleged defense in said second amended answer contained does not state facts sufficient to constitute a defense.

IV.

That the first alleged defense in said second amended answer contained does not state facts sufficient to constitute a counterclaim. [34]

V.

That the second alleged defense in said second

amended answer contained does not state facts sufficient to constitute a defense.

VI.

That the second alleged defense in said second amended answer contained does not state facts sufficient to constitute a counterclaim.

WHEREFORE, plaintiff prays judgment against defendant as prayed for in the complaint on file herein.

A. R. BALDWIN,
A. P. MATTHEW,
Attorneys for Plaintiff.

9. Thereafter, and on August 27th, 1917, said demurrer of plaintiff to said second amended answer and said motion of plaintiff for judgment on the pleadings came on duly and regularly to be heard, and in support of said motion there was read into the record and introduced in evidence and used upon said hearing all the records, pleadings, files and papers in said action hereinbefore mentioned; thereafter, after argument and due consideration, the Court sustained the said demurrer of the plaintiff to said second amended answer, and granted said motion of plaintiff for judgment on the pleadings, and rendered its judgment and ordered that judgment be given and made, and judgment was then and there given and made and entered in favor of plaintiff and against defendant for the principal sum of $8,235.08, together with interest thereon at the rate of 7% per annum, and costs of court, as prayed for by plaintiff in its said complaint, to each and all of which orders, rulings and judgment the defendant then and there

excepted and now excepts, and assigns said rulings, orders and judgment as errors. **[35]**

10. The time of the defendant within which to prepare and propose for settlement and allowance its bill of exceptions, was and has been duly and legally extended by stipulation and agreement of the plaintiff and its attorneys, and by orders of this court duly given, made, entered and filed of record herein.

And now, the defendant does hereby and now propose and present this, its bill of exceptions, to the said rulings, orders and judgment, and prays the Court to settle and allow the same as a true and correct bill of exceptions.

Dated ——, 1917.

KNIGHT & HEGGERTY,
Attorneys for Defendant.

C. W. DURBROW,
Of Counsel for Defendant.

Stipulation Re Bill of Exceptions.

The foregoing bill of exceptions is correct, and may be allowed and certified by the Honorable Wm. C. Van Fleet, Judge of said District Court.

Dated October 22, 1917.

A. R. BALDWIN,
ALLAN P. MATTHEW,
Attorneys for Plaintiff,
KNIGHT & HEGGERTY,
Attorneys for Defendant.

C. W. DURBROW,
Of Counsel for Defendant.

Order Settling and Allowing Bill of Exceptions.

The foregoing bill of exceptions is hereby settled and allowed as a true and correct bill of exceptions in said cause.

Dated November 14th, 1917.

WM. C. VAN FLEET,
United States District Judge. **[36]**

Due service and receipt of a copy of the within proposed bill of exceptions of defendant is hereby admitted this 25th day of September, 1917.

A. R. BALDWIN,
A. P. MATTHEW,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 14, 1917. Walter B. Maling, Clerk. **[37]**

(Title of Court and Cause.)

Petition for Writ of Error by Defendant, Order Allowing Writ and Supersedeas, Fixing Bond to Stay Execution, and the Bond for Costs:

To the Honorable District Court of the United States, Southern Division, Northern District of California, Second Division:

The petitioner, Pacific Mail Steamship Company (a Corporation), respectfully represents and petitions as follows:

That heretofore, to wit, on the 27th day of August, 1917, by final judgment of the District Court of the United States, in and for the Southern Division of *the District Court of the United States for* the North-

ern District of California, Second Division, rendered and entered in an action at law therein pending and in which The Western Pacific Railroad Company (a Corporation), is plaintiff and your petitioner is defendant, it was ordered and adjudged that the demurrer of the plaintiff to the second amended answer of the defendant to the complaint of plaintiff be sustained, and that the motion of the plaintiff for judgment on the pleadings in favor of plaintiff and against defendant be granted and that the plaintiff do have and recover against the defendant a judgment for the sum of $8,235.08 and costs, and judgment was entered accordingly.

That your petitioner claims a writ of error against said judgment from the United States Circuit Court of Appeals for the Ninth Circuit, and in that behalf avers that there is manifest error in the said order sustaining said demurrer, and in the order granting said motion for judgment on the pleadings, and in the said judgment in favor of plaintiff and against defendant, and as set out in the assignment of errors filed herewith.

WHEREFORE, your petitioner prays that petitioner be [38] allowed herein a writ of error upon the said judgment rendered and entered against petitioner from the United States Circuit Court of Appeals for the Ninth Circuit to the said District Court of the United States for the Southern Division of the Northern District of California, Second Division, to reverse the said judgment; that the defendant be awarded a supersedeas upon said judgment, that the amount of the bond to be given by defendant to stay

the execution of said judgment pending final decision on said writ of error and for costs upon said writ of error, be fixed, and for all necessary orders and process.

Dated September 24, 1917.

KNIGHT & HEGGERTY,
CHARLES J. HEGGERTY,
Attorneys for Petitioner.

C. W. DURBROW,
Of Counsel for Petitioner.

Order Allowing Writ of Error, Granting Supersedeas, Fixing Bond to Stay Execution and for Costs.

The foregoing petition for a writ of error is granted and allowed; the writ of error and the supersedeas therein prayed for pending final decision on said writ of error are allowed; the bond to be given by the defendant to stay the execution of said judgment including interest and delay is fixed at the sum of $10,000, and the bond for costs on said writ of error is fixed at the sum of $300; and that both said bonds may be included in one written instrument.

Dated September 25th, 1917.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]:Filed Sep. 25, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. **[39]**

(Title of Court and Cause.)

Assignment of Errors.

Now comes the Pacific Mail Steamship Company (a corporation), the defendant in the above-entitled action at law, by its attorneys, Knight & Heggerty, and its counsel C. W. Durbrow, and avers and states, that in the record and proceedings herein in the Southern Division of the United States District Court, for the Northern District of California, Second Division, and in the judgment therein, there is manifest error to the great prejudice of the defendant Pacific Mail Steamship Company, in this, to wit:

1. The Court erred in sustaining the demurrer of plaintiff to the second amended answer of the defendant to the complaint of plaintiff in the said cause, and in holding and deciding that the said answer did not constitute a sufficient answer or defense to said action and complaint, and that the separate answer of defendant to said complaint and offset therein in said answer alleged, did not constitute a sufficient answer to the said complaint, and action, and that the facts alleged in said separate answer of defendant to said complaint contained in said second amended answer, did not constitute and was not a sufficient or any answer to the said complaint and action, and did not constitute and was not a legal or sufficient or any offset to or against the demand of plaintiff or the cause of action of plaintiff or to entitle defendant to offset against the amount of plaintiff's demand, the said claim and amount of said offset and demand of defendant arising and existing as stated and set out

in said separate answer and in ruling and deciding that said second amended answer did not contain or state denials or facts sufficient to constitute an answer to said complaint or an offset to or against the cause of action or demand of plaintiff, and in granting the motion of [40] plaintiff for judgment and rendering judgment in favor of plaintiff and against defendant on the pleadings.

2. The Court erred in sustaining the demurrer of the plaintiff to the second amended answer of defendant and to the separate answer and offset therein stated and pleaded by defendant against the recovering by plaintiff of any amount or judgment without or before offsetting against and deducting from said demand of plaintiff the said offset and demand of defendant against plaintiff, and in granting the motion of plaintiff for and in rendering judgment on the pleadings in favor of plaintiff and against defendant.

3. The Court erred in granting the motion of plaintiff for judgment on the pleadings, and rendering judgment in favor of plaintiff without offsetting the demand of defendant against the demand of plaintiff alleged in the separate answer of plaintiff in said second amended answer.

4. The Court erred in holding and deciding that the facts stated in said separate answer did not constitute a legal or any offset to or against the demand and cause of plaintiff, and that defendant was not entitled to offset against the demand of plaintiff the claim and demand of defendant against plaintiff set out in said separate answer contained in the second amended answer of defendant.

5. The Court erred in holding and deciding, that defendant was not entitled to have or recover against plaintiff a judgment for the amount of State tolls, etc., alleged in said separate answer to have been paid by defendant for and to the use and benefit of plaintiff; and in deciding and holding that plaintiff did not in its tariffs set out in said separate answer assume and agree to absorb and pay the said State tolls so paid by defendant upon the competitive traffic alleged in said separate answer, and that plaintiff [41] was not legally liable for and should not be required to pay or refund to defendant the said State tolls, etc., paid for plaintiff by defendant as alleged in said separate answer.

6. The Court erred in sustaining and holding that plaintiff was entitled to a judgment against defendant for the whole amount of its said demand and claim, and without any offset against the same for and without offsetting or deducting the said sums and amounts paid by defendant for plaintiff as alleged in said separate answer, and in rendering judgment in favor of plaintiff and against defendant for the entire amount of plaintiff's demand without offsetting and deducting the said claims and demands of defendant against plaintiff as stated and alleged in said separate answer.

7. The Court erred in not holding and deciding that the second amended answer of defendant contained sufficient denials of material allegations of the complaint of plaintiff, and that the material facts stated in the separate answer and offset contained in said answer were sufficient to and did state a legal

and sufficient answer to said complaint, and to entitle defendant to offset and to a judgment of said Court offsetting against and deducting from the claim and demand of plaintiff, the sums and amount stated in said separate answer to have been paid by defendant for the use and benefit and with the knowledge of plaintiff and according to general custom for State tolls, and for advanced freight and freight charges, and which State tolls plaintiff in and by its tariffs in said separate answer stated, had agreed to absorb and pay; and that the plaintiff was legally entitled to recover only the balance of its claim and demand which defendant in its separate answer was ready and willing and offered and had offered and tendered to and to pay plaintiff as set forth in said separate answer, and that plaintiff was not legally entitled to have or receive or recover judgment for any interest upon the said balance of its claim and demand, because thereof. **[42]**

8. The Court erred in not overruling the demurrer of plaintiff to said second amended answer and to said separate answer therein contained, and in not denying and overruling the motion of plaintiff for judgment on the pleadings.

9. The Court erred in allowing and adjudging that plaintiff recover any interest upon the portion, balance and amount of the claim and demand of plaintiff which the defendant had offered and tendered payment of to plaintiff and which plaintiff refused to accept, and which portion, balance and amount defendant in its said separate answer offered and tendered and was willing, ready and able to pay

and offered and tendered to pay over and deliver to plaintiff.

10. The Court erred in holding and deciding in sustaining and granting the motion of plaintiff for judgment on the pleadings, that the second amended answer of defendant is substantially the same in its allegations as the original answer of defendant, and as the amended answer of defendant, and that the said original answer and said amended answer were and had been decided and held upon the respective demurrer of plaintiff to each thereof by the Court to be not a sufficient legal answer to said complaint or to state facts sufficient to constitute a legal answer to said complaint or a legal offset to the claim and demand of plaintiff.

11. The Court erred in holding and deciding that the plaintiff was not legally bound and required to absorb and to refund and pay to defendant the said sums and amounts paid by defendant for State tolls for the use and benefit and with the knowledge of plaintiff and according to the general custom at and of the port of San Francisco, and that plaintiff had not in and by its said tariffs agreed to absorb and pay the said State tolls upon said traffic; and in holding and deciding that defendant was legally obligated and required to pay itself on said traffic said [43] State tolls under the law and the said tariffs, and the rules of said Harbor Commissioners, and that plaintiff should not be required to absorb, refund or repay the same to defendant.

WHEREFORE: By reason of the errors aforesaid, the defendant Pacific Mail Steamship Com-

pany, prays that the orders of said Court sustaining the demurrer of plaintiff to the second amended answer of defendant and to the separate answer of defendant therein contained, and in granting the motion of plaintiff and ordering judgment for plaintiff on the pleadings, and in rendering judgment in favor of plaintiff and against defendant, and that the same be avoided, annulled and reversed, and altogether held for nothing, and that defendant be restored to all things which it hath lost by occasion thereof and of said judgment; and that defendant recover its costs upon this writ or error.

Dated September 24th, 1917.

KNIGHT & HEGGERTY,
CHARLES J. HEGGERTY,
Attorneys for Defendant.

C. W. DURBROW,
Of Counsel for Defendant.

[Endorsed]: Filed Sep. 25, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [44]

Bond on Writ of Error, etc.

KNOW ALL MEN BY THESE PRESENTS, that the Fidelity & Deposit Co. of Maryland, as surety, is held and firmly bound unto The Western Pacific Railroad Company, in the full and just sum of Ten Thousand Three Hundred ($10,300) Dollars, to be paid to the said The Western Pacific Railroad Company, its successors, representatives or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, representatives and assigns, jointly and severally, by these presents.

SEALED WITH OUR SEALS AND DATED this 26th day of September, 1917.

WHEREAS, lately at the District Court of the United States, Southern Division, Northern District of California, Second Division, in an action at law depending in said Court, between The Western Pacific Railroad Company, plaintiff, and Pacific Mail Steamship Company, Defendant, Numbered 16,021, therein, a final judgment was rendered and entered on the 27th day of August, 1917, in favor of the said plaintiff and against the said defendant, for the sum of Eight Thousand Two Hundred Thirty-five and 08/100 ($8,235.08) Dollars, together with interest thereon from said 27th day of August, 1917, at seven (7%) per cent per annum, and Nineteen and 20/100 ($19.20) Dollars costs; and said defendant having obtained from said Court a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the said judgment in the aforesaid action at law, and a citation directed to the said plaintiff, The Western Pacific Railroad Company, citing and admonishing the said plaintiff to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said defendant Pacific Mail Steamship Company shall prosecute [45] the said writ of error to effect, and pay the said judgment and answer all damages and costs, including just damages for delay, and costs and interest on said writ of error, if the said defendant fail

to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

AND IT IS FURTHER HEREBY EXPRESSLY AGREED that, in case of a breach of any condition of the above obligation and this Bond, the said District Court of the United States, Southern Division, Northern District of California, Second Division, may upon notice to the Fidelity & Deposit Co. of Maryland, of not less than ten days, proceed summarily in the said action at law therein pending to ascertain the amount which said Fidelity & Deposit Co. of Maryland is bound to pay on account of such breach, and render judgment therefor against it, and award execution therefor.

The premium charged for this bond is $103 per annum.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By C. K. BENNETT,
Attorney in Fact.
EDWIN C. PORTER,
Agent.

[Seal Fidelity and Deposit C. of Maryland.]

Approved.

WM. C. VAN FLEET,
Judge.

Due service and receipt of a copy of the within Bond on appeal is hereby admitted this 26th day of September, 1917.

A. R. BALDWIN,
A. P. MATTHEW,
Attorneys for Plaintiff.

[Endorsed]: Filed Sep. 26, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [46]

(Title of Court and Cause.)

Praecipe for Record on Writ of Error.

To the Clerk of said Court:

Sir: Please incorporate the following papers in the record on writ of error to the U. S. C. C. A.

Complaint;

Judgment;

Bill of exceptions;

Petition for writ of error;

Assignment of errors;

Order allowing writ of error and bond on writ of error.

KNIGHT & HEGGERTY,
Attorneys for Deft.

[Endorsed]: Filed November 20, 1917. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [47]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 16,021.

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,

Plaintiff,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Defendant.

Clerk's Certificate to Record on Writ of Error.

I, Walter B. Maling, clerk of the District Court of the United States of America, in and for the Northern District of California, do hereby certify the foregoing forty-seven (47) pages, numbered from 1 to 47, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remains of record and on file in the office of the clerk of said District Court, and that the same constitutes the return to the annexed writ of error.

I further certify that the cost of preparing and certifying the transcript of record on writ of error in this cause amounts to $23.05; that said amount was paid by the attorneys for the defendant; and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 2d day of January, A. D. 1918.

[Seal] WALTER B. MALING,
Clerk United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk. [48]

Writ of Error (Original).

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Second Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Pacific Mail Steamship Company, a corporation, plaintiff in error, and The Western Pacific Railroad Company, a corporation, defendant in error, a manifest error hath happened, to the great damage of the said Pacific Mail Steamship Company, a corporation, plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the

record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 26th day of September, in the year of our Lord one thousand nine hundred and seventeen.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by
WM. C. VAN FLEET,
United States District Judge.

Service of the within Writ of Error upon the defendant in error, The Western Pacific Railroad Company, by copy thereof, admitted this 27th day of September, 1917.

A. R. BALDWIN,
ALLAN P. MATTHEW,
Attorneys for Defendant in Error.

[Endorsed]: Original. No. 16,021. United States District Court for the Northern District of California. Pacific Mail Steamship Company, Plaintiff in Error, vs. The Western Pacific Railroad Company, Defendant in Error. Writ of Error. Filed Sep. 27, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [49]

Return to Writ of Error.

The answer of the Judges of the District Court of the United States, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Cricuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk. [50]

Citation on Writ of Error (Original).

UNITED STATES OF AMERICA,—ss.

The President of the United States, to The Western Pacific Railroad Company, a corporation, GREETING:

You are hereby cited and admonished to be and ap-

pear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, Second Division, wherein Pacific Mail Steamship Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 26th day of September, A. D. 1917.

WM. C. VAN FLEET,
United States District Judge.

Service of the within Citation upon the defendant in error, The Western Pacific Railroad Company, by copy thereof, admitted this 27th day of September, 1917.

A. R. BALDWIN,
ALLAN P. MATTHEW,
Attorneys for Defendant in Error.

[Endorsed]: Original. No. 16,021. United States District Court for the Northern District of California. Pacific Mail Steamship Company, Plaintiff in Error, vs. The Western Pacific Railroad Company,

Defendant in Error. Citation on Writ of Error. Filed Sep. 27, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [51]

[Endorsed]: No. 3109. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Mail Steamship Company, a Corporation, Plaintiff in Error, vs. The Western Pacific Railroad Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed January 4, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Plaintiff in Error,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,

Defendant in Error.

Order Extending Time to and Including November 26, 1917, to File Record and Docket Cause.

Good cause being shown, it is hereby ordered that the plaintiff in error in the above-entitled case may have to and including the 26th day of November, within which to file the record and docket the case in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 25, 1917.

WM. W. MORROW,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 25, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,
Plaintiff in Error,
vs.
THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,
Defendant in Error.

Order Extending Time to and Including December 26, 1917, to File Record and Docket Cause.

Good cause being shown, it is hereby ordered that the plaintiff in error may have to and including the 26th day of December, 1917, within which to file the

record and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated November 26, 1917.

WM. C. VAN FLEET,
Judge U. S. District Court.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to December 26, 1917, to File Record Thereof and to Docket Case. Filed Nov. 26, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation,

Plaintiff in Error,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,

Defendant in Error.

Order Extending Time to and Including January 4, 1918, to File Record and Docket Cause.

Good cause being shown, it is hereby ordered that the Pacific Mail Steamship Company, a corporation, may have to and including January 4, 1918, within which to file the record and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

WM. C. VAN FLEET,
District Judge.

December 26, 1917.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and including January 4, 1918, to File Record Thereof and to Docket Case. Filed Dec. 26, 1917. F. D. Monckton, Clerk.

No. 3109. United States Circuit Court of Appeals for the Ninth Circuit. Three Orders Under Rule 16 Enlarging Time to January 4, 1918, to File Record thereof and to Docket Case. Re-filed Jan. 4, 1918. F. D. Monckton, Clerk.